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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4
5 -----
6 IN RE ALTA MESA RESOURCES,)
7) Case No.
8 INC. SECURITIES LITIGATION)
9 -----) 4 :19-cv-00957

10 *****
11 CONFIDENTIAL
12 *****
13 VIDEOTAPED DEPOSITION OF
14 CHARLES WHITEHEAD
15 November 17, 2023
16 9:12 a.m.
17
18 Via Zoom Remote Conferencing
19
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22
23
24
25

Reported by: Marsi Koehl, CCR-B-2424

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1 know, in the sense of understanding, for example,
2 their activities on other boards and how that might
3 relate to this, this particular board of -- or these
4 boards of directors, that wasn't a factor.

5 Q. Okay. Understood. Did you -- did you meet
6 with any of the individual defendants in this case
7 that were either -- that were former board members of
8 any of the entities that we're discussing in this
9 case?

10 A. Not that I'm aware of.

11 Q. Is there any reason that you can think of as
12 to why the defendants themselves can't testify about
13 what they observed regarding the custom and practice
14 of board members?

15 MS. BLADOW: Objection.

16 THE WITNESS: That's somewhat
17 speculative since I've not met them.

18 BY MR. SMITH:

19 Q. Right. Well, that's what I'm asking you.

20 Do you have any reason to believe that they
21 couldn't testify to what the custom and practice is
22 based on their own experience?

23 A. Well, again, as I mentioned a few moments
24 ago, it's not that I spent a lot of time looking at
25 their experience. So your -- it's premised on

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1 I'm aware of that position that counsel has taken,
2 you know, in the context of the opinions that I'm
3 providing.

4 But, again, to be clear, my opinions don't
5 speak to the legal analysis; they speak simply to
6 custom and practice.

7 Q. And I understand that.

8 Is it your understanding that defense
9 counsel intends to you use as an expert for purposes
10 of their 20(a) good faith -- good faith defense?

11 A. I don't know counsel's strategy on this.

12 Q. Okay. So why did you cite to the case law
13 regarding the standard of a good faith defense?

14 A. Again, as I said before, counsel advised me
15 what these standards were. I accepted the advice
16 without necessarily opining on it one way or the
17 other. I'm aware of the position counsel has on
18 this. And, you know, in connection with my opinions,
19 I assumed the advice to be true. But whether or not
20 counsel strategically is offering me as a witness for
21 this or that, you'll have to talk with counsel about
22 that.

23 Q. I understand. Okay. So let's start at the
24 top of the paragraph. You say, I've been advised by
25 counsel that defendants have a legal defense to

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1 (Plaintiff's Exhibit 0834 was marked for
2 identification.)

3 BY MR. SMITH:

4 Q. Professor Whitehead, can you please take a
5 look at Exhibit 834?

6 A. Rats, hold on. What did I do?

7 (Discussion ensued off the record.)

8 THE WITNESS: I have 834.

9 BY MR. SMITH:

10 Q. Can you tell me about approximately how much
11 time you spent reading this opinion after it was
12 brought to your attention by defendants -- defense
13 counsel?

14 A. Less than a minute.

15 Q. Okay. That's how long it took you to
16 confirm that the statements were accurate?

17 A. Again, what I was doing was accepting the
18 statements as an accurate reflection of the law not
19 passing upon the analysis itself and did not bother
20 to read the entirety of the opinion to decide what
21 the standard might or might not be. That's beyond
22 the scope of what my opinion is covering.

23 Q. I understand. It kind of begs the question,
24 why include that if you didn't care whether it was
25 accurate or not?

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1 BY MR. SMITH:

2 Q. Paragraph 108.

3 A. Paragraph 108. Yeah, got it.

4 Q. And you mention Meridian.

5 A. Got it.

6 Q. TPH, SRII and Riverstone Investment Group
7 invited Meridian to -- quote, to take a look at the
8 engineering and production of the oil and gas wells
9 at AMH and Kingfisher. Do you see that?

10 A. I do.

11 Q. Do you recall reading -- strike that.

12 Who are the two representatives or the three
13 representatives that accompanied Mr. Hackett to that
14 June 7th, June 8th, 2017 due diligence meeting in
15 Houston, Texas?

16 MS. BLADOW: Objection.

17 THE WITNESS: I can't recall the names.

18 You're talking about that initial
19 meeting?

20 BY MR. SMITH:

21 Q. Yeah.

22 A. Yeah, I can't -- I can't recall the names.
23 But, you know, there were a couple of folks in that
24 meeting as I recall.

25 Q. I agree. I think there were three. The

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1 third, there's some question about what role that
2 person played because Mr. Hackett wanted to keep him
3 away from Mr. Chappelle.

4 So are you fam- -- did you read the
5 deposition transcript of Mr. Castiglioni?

6 A. I guess so. Yes. He's one of the ones I
7 looked at, yes.

8 Q. And did you read the deposition transcript
9 of Mr. Campbell?

10 A. If it's in the list, then yes.

11 UNIDENTIFIED COUNSEL: Sorry. Ms. Who?

12 MR. SMITH: Mr. Campbell.

13 UNIDENTIFIED COUNSEL: Oh, I thought you
14 said Ms. Campbell. I'm sorry.

15 MR. SMITH: It's John. John Campbell.

16 THE WITNESS: Mr. Campbell is not in my
17 list.

18 BY MR. SMITH:

19 Q. You understand that Mr. Campbell was one of
20 the representatives from Meridian that accompanied
21 Mr. Hackett; is that right?

22 A. I don't recall the names.

23 Q. Let's talk about Mr. Castiglioni.

24 Did he testify that he had provided
25 Mr. Hackett any opinions regarding the capabilities

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1 of the SPAC leasehold during that due diligence
2 session?

3 A. I don't recall the specific -- I'd have to
4 go back and check. I know there was -- I know there
5 was testimony to this. I just don't remember the
6 specifics.

7 Q. Isn't it true that the essence of
8 Mr. Castiglioni's and Mr. Campbell's testimony was
9 that they basically sat in the room for a couple of
10 hours, watched a presentation, but they were not
11 asked for any opinions and they didn't provide any
12 opinions regarding anything during that due diligence
13 session or in connection with it?

14 MS. BLADOW: Object to the form.

15 THE WITNESS: I'm sorry. Could you ask
16 the question again?

17 BY MR. SMITH:

18 Q. Isn't it true that the gist of those
19 witnesses' testimony is they -- they said they
20 basically sat in a room for a couple of hours and
21 watched a presentation but provided -- well, but were
22 asked -- strike that.

23 Is it the gist of their testimony that they
24 sat in the room for a couple of hours and they
25 weren't asked to provide Mr. Hackett any opinions and

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1 they didn't deliver Mr. Hackett any opinions
2 regarding the operational capabilities of the STACK
3 leasehold?

4 MS. BLADOW: Object to the form.

5 THE WITNESS: So I don't recall the
6 specifics of the testimony. I believe that
7 this particular meeting was, in fact, a
8 presentation by the targets.

9 The nature of what happened during the
10 presentation, I don't recall that being
11 discussed in detail in the deposition
12 testimony, but I can't recall the specifics
13 off the top of my head.

14 BY MR. SMITH:

15 Q. Well, do you have an understanding that
16 Mr. Hackett asked any of the Meridian folks for any
17 type of opinion regarding the STACK in connection
18 with that meeting?

19 MS. BLADOW: Object to the form. We're
20 over an hour, Trig. I think it would be
21 good to get a break.

22 MR. SMITH: Yeah. Let me just -- I just
23 need to finish up the questioning on
24 Meridian, please. Thank you.

25 THE WITNESS: So, again, I can't recall

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1 one way or the other simply because I just
2 don't remember the specifics of the
3 deposition testimony off the top of my head,
4 but -- I just don't recall one way or
5 another.

6 BY MR. SMITH:

7 Q. I'm just trying to figure out why you
8 elected to list those entities.

9 Did you feel it was important to list those
10 entities in your report?

11 A. Well, sure. You know, I think you're
12 focusing very much on the delivery of an opinion.
13 That's not the way due diligence operates, Mr. Smith.
14 Right? You typically have, you know, groups of folks
15 in a room. They have different views. They ask
16 different questions. They have different
17 perspectives.

18 Whether or not they ultimately deliver an
19 opinion is in some respects neither here nor there.
20 So the value of having experts in the room is that
21 they provide different insight and perspectives that
22 are valuable as part of the due diligence process
23 even if no formal opinion is delivered.

24 Q. Is it your understanding based on the
25 reading of those gentlemen's depositions that that's,

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1 withdraw it.

2 BY MR. SMITH:

3 Q. Okay. We'll just push on because I'm
4 confident that you're not going to acknowledge that
5 anything that happened here is a red flag, but let me
6 just ask you one last question.

7 When were shareholders asked about on this
8 deal?

9 A. February of 2018 as I understand it.

10 Q. February 6th -- February --

11 (Overlapping speakers.)

12 THE WITNESS: Was it six or eight?

13 (Overlapping speakers.)

14 THE WITNESS: I think it was 8.

15 BY MR. SMITH:

16 Q. Okay. Perfect. February 8th.

17 So when the board is informed four days
18 later that they are going to have to cut the KFM
19 projections by almost half, you don't see that as a
20 red flag?

21 MS. BLADOW: Objection to form.

22 THE WITNESS: So it's not entirely clear
23 to me what the board was informed of on
24 February 12th.

25 BY MR. SMITH:

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1 Q. Why is that?

2 A. Well, the minutes -- the materials that I've
3 looked at suggest that there was a discussion about
4 CapEx budget but not necessarily about the extent to
5 which there might be a shortfall in EBITDA.

6 However, to the extent that there was a
7 shortfall in EBITDA, there were also a lot of reasons
8 why that shortfall might have taken place, for
9 example, the transition of the management team, the
10 fact that you have a new management team coming into
11 Kingfisher. As I understand it, there were CapEx
12 constraints at AMH that may have slowed their ability
13 to build out as quickly as they otherwise wanted.

14 There was also a concern that there might
15 have been a CapEx slowdown in the STACK generally.
16 And as I understand it, also during this period there
17 were changes in commodity pricing.

18 So in aggregate, I would not have viewed a
19 change in projections -- because projections by their
20 nature are forward looking and based upon lots of
21 variables, that there would be based on this a red
22 flag.

23 Q. Where were oil prices going in February of
24 2018? Are you suggesting they were going down?

25 A. No. I'm saying there was volatility. I

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1 don't know what the impact was/ my point is there are
2 lots of things that feed into the way in which you
3 look at the projections, lots of different factors.
4 I don't -- I don't know where oil prices were, up or
5 down.

6 Q. Do you know what the assumption was for the
7 oil price in 2018 and the model the company used to
8 come up with the valuation for the business
9 combination?

10 MS. BLADOW: Objection.

11 THE WITNESS: Yeah. I don't recall.

12 BY MR. SMITH:

13 Q. Above it or below it?

14 A. I don't recall.

15 Q. Okay. So your explanation for volatile oil
16 prices -- how does that -- how does that dovetail to
17 this?

18 A. Because you had asked -- you had asked
19 whether or not a change in EBITDA projections is a
20 red flag. My point to you is within this there's
21 buried lots of different information. There is
22 commodity prices, up or down. There is, as I
23 mentioned, this delay in CapEx as I understand. I
24 think Mr. Hackett spoke of this.

25 There's the question about transition in

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1 management teams, whether or not ARM Energy had been
2 able to basically meet what they thought as a
3 build-up -- as a sales plan to bring in
4 third-party -- third-party companies, the extent to
5 which there might have been a slowdown in CapEx
6 expenditures generally in the STACK.

7 These are all factors. So I think you,
8 perhaps, understood this to mean all negative
9 factors. I'm just saying these are all factors that
10 speak to the projection.

11 And because of these different factors, it
12 wouldn't -- you can point to any number of
13 combination of these factors to understand why
14 there's been a shift in the projections, keeping in
15 mind these are projections.

16 Q. No, I understand. I totally understand.

17 What other than a slowdown in third-party
18 activity did the company give for the reason to cut
19 KFM's projections from 185 million to a range of 95
20 to 110?

21 MS. BLADOW: Objection.

22 BY MR. SMITH:

23 Q. Did they give an excuse that there were
24 problems with oil prices?

25 MS. BLADOW: Objection.

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1 THE WITNESS: Oh, I don't recall there
2 being specifically -- you're talking about,
3 I think, in the guidance that was provided.
4 I don't recall there being something
5 specific on oil prices.

6 Again, my point is projections by their
7 nature have lots of factors in them. And so
8 some of them will be up. Some of them will
9 be down. But the point is you can have as a
10 result significant fluctuations in
11 projections and not -- and have them not be
12 a red flag.

13 In fact, I would suggest to you if you
14 had a significant increase in projections
15 that's also something that could happen
16 given the nature of the projections because
17 there are so many factors that feed into it.
18 In this case it just happened to be a
19 downturn.

20 BY MR. SMITH:

21 Q. Did the company ever increase the
22 projections in 2018?

23 MS. BLADOW: Objection.

24 THE WITNESS: I think they stuck -- I
25 don't believe they increased them. I don't

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